IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3217 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JERAMBHAI SOMABHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 3217 of 2005

MR FEROZ H PATHAN for Petitioner No. 1

MR IM PANDYA, AGP for Respondents No.1, 2, 3

MR MIA SHAIKH for Respondent No.4

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 04/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by the District Magistrate, Ahmedabad on 19.12.2004 in exercise of powers conferred upon him vide Sub-Section (2)(a) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies

of Essential Commodities Act, 1980 (PBM Act for short). The petitioner is under detention in pursuance of the said order from 01.12.2004.

2. The grounds of detention as placed on record reveal that the present petitioner was a bill clerk of Shiyavada Dangar Utpadak Sahakari Mandli Limited and one Shri Vasharambhai Mavjibhai Patel was the Secretary. A licence was granted to this Co-operative Society of fair price shop. The management of keeping the accounts etc. was within the duties of the present petitioner and as per the allegations, in collusion with secretary of such Co-operative Society, Shri Vasharambhai Mavjibhai Patel, the petitioner committed grave illegalities prejudicial to the maintenance of supplies of commodities essential to community. The said fair price shop was checked and inspected by the Deputy Manlatdar (Supply), Sanand on 22.09.2004, 24.09.2004 and 27.09.2004. It was found that there were two bill books, one of them was faked and kerosene to card holders were sold at the rate of Rs.9.50 paisa instead of scheduled price. It was also found that from the quota of kerosene of July, August, 2004, 120 liters of kerosene was disposed of illegally and was not distributed to the card holders. In the month of September, 2004, though 2700 liters of kerosene was allotted to the said Co-operative Society, but only 1100 liters of kerosene was obtained and distributed, but on checking, it was found that 25 liters of kerosene was disposed of illegally without distributing the same amongst the card holders. On checking, it was also found that from the quota of wheat and rice of July, August and September, 2004, 660 Kg. of wheat and 146 Kg. of rice were disposed of by the petitioner illegally and instead of Rs.3-00 per Kg. for rice and wheat, the petitioner realized an amount of Rs.8-00 per Kg for rice and wheat from the ration card holders. It was also found that the petitioner in collusion with Secretary Shri Vasharambhai Mavjibhai Patel, disposed of the quantity of wheat and rice in village Shiyavada at the rate of Rs.80-00 and 160-00 for wheat and rice and thereby obtained huge financial profit through black marketing. Out of 2700 liters of kerosene for the month of September, 2004, quantity of 1600 liters of kerosene was disposed of illegally by the petitioner and Secretary Shri Vasharambhai Mavjibhai Patel by obtaining huge profit and through black marketing. Other irregularities were also found. Thereafter, the sponsoring authority made proposal to the detaining authority and after considering all the relevant materials placed before him, the detaining authority came to the conclusion that though a criminal prosecution was launched against the petitioner

for the breach of Sections 3 and 7 of the Essential Commodities Act, 1955 and though a licence of the said fair price shop was suspended for 90 days, but such steps were not sufficient to prevent the petitioner acting in a manner prejudicial to the maintenance of supplies of commodities essential to the community. The detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PBM Act to prevent his prejudicial black marketing activities, as aforesaid. The detaining authority, therefore, passed the order of detention of the petitioner under the PBM Act, which is under challenge in this petition.

3. Learned advocate Mr.M.R.Prajapati for the petitioner, learned AGP Mr.I.M.Pandya for the respondents No.1, 2 and 3 and learned standing counsel for the Central Government Mr.M.I.A. Shaikh for the respondent No.4 were heard at length. The affidavit-in-reply as filed by the detaining authority, affidavit-in-reply as filed by Mr.H.C.Kapadia, Deputy Secretary of the Government of Gujarat, Food, Civil Supplies & Consumer Affairs Department, Sachivalaya, Gandhinagar and affidavit-in-reply filed by Mr.A.K.Ganguly, under Secretary in the Department of Consumer Affairs, Food and Public Distribution, New Delhi, were also taken into consideration.

4. The various grounds were urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP as well as learned standing counsel for the Central Government, it appears that this Special Civil Application can be examined and disposed of, on the sole issue as to whether the right of the detenu to make effective representation as enshrined by Article 22(5) of the Constitution of India is infringed.

5. It was urged on behalf of the petitioner that going through the grounds of detention as well as the papers served upon the petitioner, it clearly appears that the detaining authority relied upon two aspects, firstly upon the bill books alleged to have been fabricated in duplicate and secondly, ration cards alleging either that proper quota was not allotted to the card holders or if allotted then at higher price. It was urged that the bill books and ration cards are seized by the competent authority and relied upon to arrive at subjective satisfaction, but the copies of the same are not made available to the detenu adversely affecting the right of detenu to make effective representation.

6. Having regard to the rival contentions, it is necessary to refer to a decision of the Division Branch of this Court in the matter of BUDHABHAI SOMABHAI PARMAR Vs. DISTRICT MAGISTRATE KHEDA & ORS., as reported in 1989 (1) G.L.R. 325. In similar circumstances, the Division Bench of this Court, after relying upon the decision of the Apex Court in the matter of Hansmukh v. State of Gujarat and Ors., as reported in AIR 1981 SC 28 observed that the records maintained by the detenu like books of account and bill books, while running fair price shop, are basic facts containing the grounds of detention. In paragraph No.8, the Division Bench of this Court, in the above said decision of Budhabhai (Supra) observed as under:-

"However, the learned Counsel for the petitioner is on a stronger footing when he has pointed out that copies of bill books which have been referred to in the grounds of detention and in respects of which irregularities and illegalities are alleged to have been committed are not supplied to the detenu. It could not be disputed by the learned Counsel for the respondents that the copies of the bill books in respect of pamoline oil, sugar, wheat and rice, that is the commodities in question, have not been supplied to the detenu. On going through the grounds of detention it is evident that there is profuse reference to bill books in respect of the aforesaid commodities. It is also clear that the bills are the primary material from which the entries will be posted in the stock register. While distributing the essential commodities, the first document to be prepared would be a bill. Whether the bill books were blank or written or they were written falsely is altogether a different question. Had the copies of bill books, in whatever form they were, been supplied to the detenu, he would have certainly been able to make his representation effectively. If the bill books were blank, on one piece of paper giving details about the bill books and containing the remark 'blank' would be considered sufficient compliance. Since the very alleged illegal activities were in respect of bill books and the maintenance of stock register, it has got to be held, in the facts and circumstances of the case, that bill books did from part of basic facts constituting the offence and the alleged prejudicial activities. Therefore, it has to be

included in the term "grounds" which occurs in Art. 22(5) of the Constitution of India and also in Sec.8 of the Act."

7. The grounds of detention abundantly makes it clear that the detaining authority relied upon basic materials of bill books alleged to have fabricated by the detenu. The detaining authority, as well, relied upon the ration cards and entries made therein, in arriving at subjective satisfaction. True it is that the detaining authority also relied upon the statements of the card holders as explained by the detaining authority in paragraph No.8 of his affidavit-in-reply. Undoubtedly, in view of the above ratio laid down by the Division Bench of this Court in the matter of Budhabhai (Supra), the bill books and ration cards would be basic material upon which the detaining authority formed his subjective satisfaction. Non-supplying of such basic documents, would affect the right of detenu of making effective representation as envisaged by Article 22(5) of the Constitution of India, and the further detention of the petitioner would be illegal, invalid and not in accordance with law. In above view of the matter, the order challenged in this Special Civil Application is required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by the District Magistrate, Ahmedabad on 19.12.2004, against the petitioner in exercise of powers under Sub Section (2)(a) of Section 3 of the PBM Act is hereby quashed and set aside. The detenu Jerambhai Somabhai Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)